

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

v.

VISION IMPROVEMENT TECHNOLOGIES,
INC., an Iowa corporation;

CLIFF ROSE, in his individual and
corporate capacities;

DAVID E. SYKES, in his individual and
corporate capacities;

DAVID W. MURIS, in his individual and
corporate capacities; and

GARY KORF, in his individual and
corporate capacities,

Defendants.

Equity No. CE51687

PETITION IN EQUITY

The State of Iowa ex rel. Attorney General Thomas J. Miller, through Assistant Attorney General Steve St. Clair, states as follows for its cause of action against Vision Improvement Technologies, Inc. (hereafter "VIT") and the individuals named in the caption above.

INTRODUCTION

1. Vision Improvement Technologies sells the dream of casting off one's glasses – quickly, easily, and without having to undergo worrisome surgery. The company sells this dream in the form of the "See Clearly Method," an assortment of eye exercises based largely on

discredited vision theories from another era. Although VIT can cite no scientifically valid testing to answer the core question, “Does this really work?”, the company manages to sell the See Clearly Method in volume through a combination of misleading and unfair marketing tactics, including exaggerated performance claims, false implications of scientific validity, misleading consumer testimonials, endorsements from financially-interested doctors, and a deceptively presented “risk free” trial period that ends up obligating many consumers to pay hundreds of dollars apiece for a product from which the consumer derives no benefit whatsoever. The Attorney General seeks to halt the unfair and deceptive practices and obtain appropriate reimbursement for consumers.

VENUE

2. Venue is proper in Polk County, Iowa, because Defendants do business in Polk County through VIT and one or more victims of the practices in question reside in Polk County. Iowa Code § 714.16 (10) (2005).

PARTIES

3. Thomas J. Miller is the duly elected Attorney General of the State of Iowa.

4. VIT was incorporated in the State of Iowa on February 4, 1999. VIT has been headquartered in Fairfield, Iowa since its inception.

5. Cliff Rose of Fairfield, Iowa was one of the founders of VIT, is a part-owner of the company, and has served as VIT’s Vice President of Sales. Rose has been a member of VIT’s six-person Board of Managers since at least 2001. Rose has been a key participant in VIT since the inception of the company, and his participation renders him legally responsible for the violations of law alleged.

6. David E. Sykes of Fairfield, Iowa was one of the founders of VIT, and acted as VIT's President and CEO from at least August 1, 2001 through July 1, 2003. Sykes was also a member of VIT's Board of Managers from at least 2001, and was a member of the three-person Executive Committee of the Board from March 2001 until his severance from VIT on July 1, 2003. Sykes was a key participant in VIT from the inception of the company until July 1, 2003, and his participation renders him legally responsible for the violations of law alleged to have occurred during his tenure, as well as violations that occurred thereafter as a result of his previous participation.

7. David W. Muris is an optometrist practicing in Sacramento, California. Muris is a part-owner of VIT and has been a member of VIT's Board of Managers since at least 2001. Muris contributed to the development of VIT's principal product, the See Clearly Method. Since the inception of the company Muris has been a key participant in VIT and his participation renders him legally responsible for the violations of law alleged.

8. Gary Korf of Fairfield, Iowa is the current president of VIT, a position he has held since July 1, 2003. Before assuming the position of president Korf was Chief Financial Officer of VIT beginning in March 2003. Korf reports directly to the Executive Committee of the Board of Managers. Korf has been a key participant in VIT and his participation renders him legally responsible for the violations of law alleged to have occurred during his tenure.

9. Hereinafter "defendants" is intended to refer to all named defendants, unless the context otherwise requires.

JURISDICTION

10. The Iowa Attorney General is authorized to bring this action on behalf of the State of

Iowa by Iowa Code §§ 714.16 (7) and 714.16A (1) (2005).

11. The Iowa Consumer Fraud Act, Iowa Code § 714.16 (2)(a) (2005) (“the Consumer Fraud Act”) provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits ... if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

12. Iowa Code § 714.16 (1) provides the following definitions:

(f) “Deception” means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) “Unfair practice” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

13. Iowa Code § 714.16 (7) provides, in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

14. In describing remedies under the Consumer Fraud Act, Iowa Code § 714.16 (7) provides in pertinent part as follows:

If it appears to the attorney general that a person has engaged in, is engaging in, or

is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a ... permanent injunction issued under authority of this section.

15. Iowa Code §§ 714.16A (1) & (3) (2005) provide, respectively:

If a person violates section 714.16, and the violation is committed against an older person, in an action by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.

As used in this section, "*older person*" means a person who is sixty-five years of age or older.

FACTUAL ALLEGATIONS

16. Since April of 2000, VIT has marketed nationwide a product called the "See Clearly Method" (hereinafter sometimes referred to as "SCM" or "the Method") through radio, tv, a website (<http://www.seeclearlymethod.com/>), print ads, and other means. As of July 2004, VIT was shipping from about 5,000 to 10,000 See Clearly Method programs a month to customers, and upon information and belief that approximate rate has continued to the present.

17. The SCM has been sold at different prices at different times, but was sold for

\$379.89 during much of 2004 and was being sold for \$358.95 as of April of 2005.

18. VIT's advertisements present the See Clearly Method as a kit of materials designed to improve a consumer's vision through eye exercises, thereby reducing or eliminating the consumer's need for glasses or contacts. The kit consists primarily of an Instruction Manual, a Daily Progress Journal, audio tapes and videotapes. The Instruction Manual includes various charts to be used by the consumer in performing the prescribed exercises. In addition, some versions of the kit have included a DVD, and a nutritional supplement claimed to promote vision and eye health.

19. Each separate medium -- the booklets, audio tapes, videotapes, and DVD -- contains virtually the same information and exercises, which in each instance is largely the same as the information and exercises contained in the 1996 book *Improve Your Vision Without Glass Or Contact Lenses*, co-authored by the doctors who designed the See Clearly Method. The paperback version of that book bears a price of \$11.00.

20. Advertisements for the See Clearly Method urge consumers to call a toll free number to obtain a free videotape relating to the Method. Consumers who call the number reach a telemarketing operation that contracts with VIT. From about November of 2001 to the present, the operation handling such telemarketing for VIT was O'Curran, Inc. of Salt Lake City, Utah.

21. Telemarketers at O'Curran (pronounced "occurrence") receive the consumer calls prompted by VIT advertisements, and use scripts jointly crafted by VIT and O'Curran -- but finally approved by VIT -- to sell the See Clearly Method. The contents of the scripts have changed from time to time to reflect changes in the price, terms of sale, or product components, or to modify the way in which the Method is marketed. Because of such ongoing change,

references herein to the See Clearly Method telemarketing script may apply to some but not all versions of the approved script.

22. Consumers who call to obtain the free videotape are urged to commit to purchase the Method on the following representative terms: The consumer pays \$9.95 to have the full program promptly shipped to the consumer's home; the consumer has a 30 day trial period; the consumer can return the package within the thirty day period and pay nothing more; or the consumer can keep it and his or her credit card is billed the total price (e.g., \$358.95), typically in five monthly instalments. Consumers who decline to make an immediate purchase and insist on receiving the free videotape highlighted in the advertisement are sent the videotape without cost. The free videotape, which is essentially an infomercial replete with testimonial claims of success, again urges the consumer to call the toll free number to buy the See Clearly Method.

23. Approximately 50 % of consumers who order the Method successfully exercise the return option and thus avoid charges beyond the initial \$9.95.

24. The eye exercises and so-called "techniques" contained in the See Clearly Method are varied. They include, for example, focusing one's eyes using special charts or props, facing a bright light with one's eyes closed at a distance of a few inches, covering one's eyes with one's hands for sustained periods, and applying hot and cold washcloths over the closed eyes. VIT expressly credits the theories of William Horatio Bates, creator of the so-called "Bates Method," as the source of some of the principles and techniques of the See Clearly Method.¹

¹ The "Bates Method" is derived primarily from Bates's own 1920 book, *The Cure of Imperfect Sight by Treatment Without Glasses*, and from the 1918 publication of Bates collaborator Bernarr McFadden, *Strengthening the Eyes: A New Course in Scientific Eye Training in 28 Lessons*.

THE BATES METHOD

25. VIT has instructed its telemarketers that if consumers ask whether the See Clearly Method is similar to the Bates Method, they are to respond that Dr. Bates pioneered natural vision therapy in the U.S. in the early 1900s and that the See Clearly Method has incorporated some of Bates's "principles and techniques." The See Clearly Method Instructional Manual also credits the Bates Method as the starting point of the natural vision improvement field that is said to have "steadily evolved" in the U.S. and elsewhere.

26. It is universally accepted by mainstream ophthalmologists and optometrists that accommodation (the vision process by which the eye adjusts in order to focus on objects at different distances) involves the ciliary muscles which attach to and control the shape of the lens. However, the Bates Method was grounded in part on Dr. Bates's mistaken belief that accommodation is controlled by the same outer muscles that re-position the entire eyeball in its socket and that neither the ciliary muscles nor even the lens itself has any role to play in accommodation. Upon information and belief, even the creators of the See Clearly Method now reject this part of Dr. Bates's theory on how the eye functions.

27. Even though Dr. Bates designed his various exercises and techniques burdened by a fundamental misunderstanding of how the eye functions, VIT imported some of these exercises and techniques into the See Clearly Method. The Bates Method involved various near/far focus-shifting exercises, eye crossing exercises, blinking exercises, and eye rolling exercises, as well as such "techniques" as massaging certain parts of the area around the eyes and "palming" (placing one's palms over one's eyes to block out all light -- see Exhibit A²). Versions of each of these

² Exhibits A, D and E are from Bates's book, cited in the preceding footnote.

have been made part of the See Clearly Method. (*See, e.g., Exhibits B and C.*³)

28. The Bates Method also extolled the benefits of staring directly into the sun for prolonged periods, claiming that in some instances “complete cures” of vision problems have been effected in this manner. Bates’s book includes illustrative photos of people staring “without discomfort” into the sun (*see Exhibit D*), and of a person having the sun’s rays focused by a magnifying glass onto her open eye (*see Exhibit E*).

29. The See Clearly Method has not adopted the “stare-into-the-sun” aspect of the Bates Method. However, as a substitute the See Clearly Method recommends “light therapy,” that is, placing a 150 watt bulb six inches away from one’s closed eyes for two to three minutes at a time (*see Exhibit F*).

The effect of thoughts upon vision

30. The Bates Method is rooted in part in Dr. Bates’s belief that a person’s vision defects are invariably tied to what the person is thinking; indeed, Dr. Bates believed that poor vision is the direct result of “wrong” thoughts. “The cause of any error of refraction ... or of any other functional disturbance of the eye, is simply a thought – a wrong thought – and its cure is as quick as the thought that relaxes. In a fraction of a second the highest degrees of refractive error may be corrected ...” For example, according to Dr. Bates, “[o]ne woman’s sight was corrected by the memory of a yellow buttercup ...”

31. The See Clearly Method again follows the lead of Dr. Bates, instructing the user to “imagine your eyes becoming stronger and healthier” while palming, and also while engaged in light therapy. (*See Exhibits C and F*.) Similarly, the See Clearly Method user is instructed to be

³ Exhibits B, C and F are from the See Clearly Method Instruction Manual.

“visualizing positive changes taking place” while engaged in hydrotherapy (the washcloth treatment described above).

32. Along similar lines, the See Clearly Method Instruction Manual informs consumers that “one of the most powerful predictors of a person’s success with the See Clearly Method is their attitude. That is, if you’re optimistic and open to new ideas you’re more likely to achieve success with the program.” As a way to “harness” this power, the Method recommends that a user select “affirmations” from a list, and repeat them or think of them “as often as possible during the day.” The menu of suggested affirmations includes: “I am seeing better each day,” “I feel positive changes in my vision taking place,” and “I can see without my glasses.”

Glasses as hindrances

33. The Bates Method held that glasses interfere with normal vision. Because glasses make vision worse, according to the Bates Method, they should simply be discarded.

34. Operating on similar assumptions, the designers of the See Clearly Method recommend “progressive undercorrection.” This involves wearing corrective lenses weaker than what is required to see clearly, so that vision is slightly blurred. According to the See Clearly Method doctors, by progressing through a succession of ever weaker prescriptions, one can move toward normal vision free of corrective lenses.

Critiques of the Bates Method

35. The Bates Method has been the subject of intense criticism from various authorities for more than fifty years. For example:

- a. As early as 1952, a study in the *American Journal of Optometry* reported that “[m]ost of his [Bates’s] claims and all of his theories have been considered false by practically all visual scientists.” Marg, Elwin; *Am. J. Optometry*, V.29, No. 4; April 1952.

b. In *The Truth About Eye Exercises* (1956), Dr. Phillip Pollack subjected the Bates Method to a painstaking analysis. Noting that ophthalmologists regarded some of Dr. Bates's recommendations as downright harmful (such as instructing patients to stare into the sun) and regarded other Bates claims as merely strange (such as Bates's contention that he could tell from a person's photograph whether the person had normal vision), Pollack concluded that "[n]ot a single exercise in the Bates system has any value whatsoever as far as reducing refractive errors is concerned." More generally, Pollack concluded that although eye exercises have a role to play in treating certain problems, such as the failure of the eyes to coordinate, "[e]ye exercises of any kind cannot eliminate or even reduce nearsightedness, farsightedness or astigmatism. They are completely worthless as far as eliminating the need for glasses is concerned."

c. Dismissing the Bates movement as a "pseudo-scientific cult," Martin Gardner wrote in 1957 that "there is not the slightest factual foundation for Bates' theory of accommodation or the value of his exercises." *Fads and Fallacies in the Name of Science*, Dover 1957, p. 342.

d. The Subcommittee on Health and Long-Term Care of the Select Committee on Aging of the U.S. House of Representatives concluded a four year investigation with a 1984 report entitled *Quackery, A \$10 Billion Scandal*. The report noted that the Subcommittee arranged for experts to review the book *How to See Without Glasses*, a 1969 publication that relied heavily upon the Bates Method and included various of the exercises that the See Clearly Method also borrowed from Bates. The report cited the reviewers' conclusion that "neither the exercises advocated nor any other exercises would be effective in correcting vision."

e. In *The Health Robbers, A Close Look at Quackery in America* (1993), contributing authors Russell S. Worrall, O.D. and Jacob Nevyas, Ph.D, Sc.D, stated that "[c]ontrary to scientific fact, Bates taught that the dimensions of the eyeball and the state of the crystalline lens have nothing to do with poor eyesight. It should be obvious that these exercises cannot influence eyesight disorders as Bates claimed."

f. The *Encyclopedia of Pseudoscience* (2000), noting that Dr. Bates was the first exponent of the theory that visual defects could be cured by throwing away one's glasses and following a prescribed regimen of eye exercises, states that this idea was "one of the most persuasive pieces of pseudoscience in the early part of the 20th century ..."

g. The advice of the National Eye Institute, a component of the U.S. government's National Institutes of Health, runs directly counter to the contention that one should discard one's glasses (Bates Method) or accustom oneself indefinitely to blurred vision for therapeutic reasons (See Clearly Method). The Institute warned that "[u]ncorrected or under-corrected refractive error can result in significant vision impairment." *Vision Problems in the U.S.*, 2002.

36. Such challenges to the principles and techniques undergirding the See Clearly Method underscore the importance of requiring that those profiting from extraordinary product claims be able to substantiate those claims, as mandated by Iowa Code § 714.16 (2)(a) (*see* paragraph 11 above).

REPRESENTATIONS OF EFFICACY AND SCIENTIFIC FOUNDATION

37. VIT represents that the Method is generally effective in improving eyesight, that by using the Method many or most users can reasonably expect to discard corrective lenses, and that the See Clearly Method is scientifically grounded. These representations lack substantiation and, upon information and belief, are false.

Claims of effectiveness in improving vision

38. See Clearly Method telemarketers are scripted to misrepresent the effectiveness of the Method in improving vision by claiming that the Method will work for almost anyone with common vision problems, and that if used as designed “it’s *almost impossible* not to see results,”⁴ in most cases within about two weeks.

39. Advertisements for the See Clearly Method exaggerate the effectiveness of the Method through such claims as the following:

- a. “In just minutes a day you can enjoy *a lifetime of seeing clearly*.”

⁴ Throughout this Petition, emphasis that appears within quoted text has been added, unless otherwise indicated; references throughout to “glasses” should be interpreted to include other corrective lenses such as contacts, unless the context otherwise suggests; when specific instances are cited in connection with a more general allegation the instances should be regarded as illustrative and not exhaustive; and practices described in the present tense are alleged to have occurred within the course of VIT’s marketing of the See Clearly Method, but may in some instances have been discontinued prior to the filing of this Petition.

- b. "If you'd like to experience the *minor miracle* of actually improving your vision naturally, call 1-800 ..."

Claims of effectiveness in eliminating corrective lenses

40. Advertisements for the See Clearly Method exaggerate the effectiveness of the Method in eliminating the user's need for corrective lenses through such representations as the following:

- a. "The ultimate goal is to *see without your glasses*."
- b. "Join the many who have *thrown away their glasses*."
- c. "How would you like to *be free from the burden and stigma of your glasses or contact lenses for the rest of your life* and without laser surgery?"
- d. "*Glasses and contacts? There's a better way* to improve your vision ..."
- e. "If you want to *get out of glasses without surgery*, the authors of the See Clearly Method say it could be your escape plan."

41. See Clearly Method telemarketers are scripted to exaggerate the effectiveness of the Method in eliminating the need for corrective lenses for many or most users by claiming that the Method could reduce or even eliminate dependency on glasses or contacts, and that it is a reasonable expectation for many users to "get out of their glasses."

42. See Clearly Method telemarketers are scripted to represent that even consumers whose eyesight is particularly bad can shed their glasses, although they should not expect to achieve clear vision quite as quickly. Would-be purchasers are told, for example, that if they have been wearing glasses for decades and have a strong prescription, they should not expect "to get rid of them *overnight*."

43. See Clearly Method telemarketers are scripted to claim that laser surgery compares

unfavorably to the Method in terms of eliminating glasses, by telling consumers that according to the FTC most people who undergo laser surgery will still have to wear glasses at some point. This contrast falsely implies that, unlike patients of laser surgery, most users of the See Clearly Method can expect to be completely free of glasses indefinitely.

44. See Clearly Method telemarketers have been trained to exaggerate the effectiveness of the Method in eliminating the consumer's need for glasses. Telemarketer trainees have been told that:

- a. The reason consumers respond to See Clearly Method ads is because they want and need to be out of their glasses.
- b. With the Method, there is no reason why anybody would ever have to wear glasses.
- c. Telemarketers could use a story about an 88 year old firefighter who was spared ever having to wear glasses through eye exercises – a story which, upon information and belief, is wholly unsubstantiated.
- d. Eye exercises will become so widespread and routine that the next generation of children won't ever have to wear glasses.

45. Consistent with such training, See Clearly Method telemarketers have made representations to prospective customers that grossly exaggerate the effectiveness of the Method:

- a. "[N]ow the doctors say, within as little as six weeks you can be *out of your glasses totally*."
- b. "So would you like to get [the Method] sent out there to you so you can get out of those glasses?"
- c. "But for \$9.95 ... what do you have to lose but those reading glasses, right?"
- d. [To a prospective customer after establishing that he has worn glasses for forty years:] "Okay, well, you're ready to get out of them, aren't you?"
- e. "The See Clearly Method ... *corrects* problems like near-sightedness, far-sightedness, astigmatism ..."

46. The free promotional video that VIT sends to consumers stresses the elimination of corrective lenses through such statements as the following:

- a. “[The Method] makes more sense than wearing glasses or getting surgery ...”
- b. “[I]t’s every mother’s right that ... her children do not have to wear glasses.”
- c. “[T]he See Clearly Method is a way to keep your kids out of glasses.”
- d. “[T]he See Clearly Method can help most people get rid of their glasses or contact lenses or at least reduce their dependency on them ...”
- e. “And that’s what this program does – it enables you to see clearly without glasses, without lenses.”

47. The promotional video also features a succession of consumers repeating the “get rid of your glasses” message: “I don’t have to wear my glasses anymore;” “I don’t need my glasses to watch television or to the movies anymore;” “I don’t need distance glasses;” “It feels very free to not be wearing the glasses;” “It was great to not wear glasses anymore;” “The bottom line is, why wear glasses if you don’t have to?”

Scientific Grounding

48. Radio advertisements falsely represent that the See Clearly Method is scientifically grounded by claiming *inter alia* that the Method is a “proven program,” based on “fifty years of research,” and is a “*scientific breakthrough*.”

49. See Clearly Method telemarketers falsely represent that the See Clearly Method is scientifically grounded by frequently emphasizing the involvement of doctors and research scientists in developing the Method, and by claiming that the Method is based on more than 1,500 published articles and research papers.

50. When consumers affirmatively ask what research there is on the program,

telemarketers are scripted to admit that there is no formal research on the Method. However, telemarketers are further scripted to mislead consumers on the issue of scientific grounding by describing a scientific-sounding clinical evaluation in which 86 % of the participants “reduced or eliminated their use of glasses or contacts.”

51. VIT is acutely aware of the persuasive impact upon consumers of such references to research by professionals; telemarketers are expressly instructed to “[c]reate credibility” by talking about the doctors, the clinical evaluation, behavioral optometry, and the doctor referral network.

52. Upon receipt of the kit a purchaser has thirty days to decide whether to keep or return the See Clearly Method and avoid the \$358.95 credit card charge. A consumer who reviews the kit’s Instruction Manual to assist in making that decision is expressly assured that the See Clearly Method is “a positive approach with a *scientific foundation*.” Other representations in the Manual reinforce the message that the Method is anchored in sound science:

- a. The “*ground-breaking knowledge*” embodied in the See Clearly Method is the culmination of “decades of *research and clinical experience*.”
- b. Most eye doctors are unaware of the “*sizable body of professional literature and research* available on natural vision improvement.”
- c. “The doctors who created the See Clearly Method ... are top professionals with distinguished careers in *vision research* ...”
- d. The techniques have been “*proven effective* in years of clinical practice with thousands of patients ...”

Substantiation Requirements

53. Such claims for the efficacy of the See Clearly Method as those cited above give rise to the substantiation requirement of Iowa Code § 714.16 (2)(a). VIT has long been aware of the

need for substantiation; in October 2001 VIT informed would-be investors that “[t]he Company is sensitive to ... the requirement that claims for its products be substantiated.”

54. The representations to consumers that the See Clearly Method is scientifically validated give rise to the further requirement that efficacy be established through the application of scientific testing, *i.e.*, through at least two well-controlled, double-blind studies.

THE CLINICAL EVALUATION OF THE SEE CLEARLY METHOD

55. If prospective purchasers ask what research exists on the See Clearly Method, telemarketers are scripted to tell them that although there is no formal research, in 1999 the doctors who created the Method performed a clinical evaluation in which 21 people used the program for 5 weeks; that 20 subjects (95 %) improved their visual acuity; 18 (86 %) reduced or eliminated their use of corrective lenses; 14 (67 %) reduced prescription strength; and 20 of the 21 subjects (95 %) were satisfied with the results of using the Method. Telemarketers are also provided the option of disclosing that no control group was used in the clinical evaluation.

56. The above description is misleading in that it fails to disclose several facts that would be important to a consumer wishing to understand and assess the clinical evaluation in question, and relate it to the circumstances in which he or she expects to use the See Clearly Method. Such undisclosed material facts include the following:

- a. The effort in question was a *preliminary* clinical evaluation.
- b. Dr. Muris, one of the two people performing the clinical evaluation, was a part owner of VIT and had a direct financial interest in obtaining results purporting to show that the See Clearly Method was effective.
- c. Only persons with particularly mild vision problems were selected to participate. People with “high” and even “medium” nearsightedness were excluded. Similarly, as to the loss of focusing power due to aging, only those who were using or were about to use

their first pair of reading glasses were selected.

d. Although 30 participants began the evaluation, results were only reported for the 21 who appeared for the final eye exam at the end of the six weeks.

e. Participants were tested for improvement after six weeks of practicing the techniques, during which time they were expected to practice the techniques for at least one-half hour daily. Participants also received support in the form of weekly seminars of instruction during that period.

f. In addition to the regimen of weekly seminars of instruction and daily exercises, each participant was provided with an eye patch, was instructed to wear it for at least one hour each day, and was cautioned that not doing so might “fail to get results.” The See Clearly Method kit that was later sold to consumers gave only passing mention to the use of an eye patch, and neither provided an eye patch nor instructed consumers to use one for an hour each day.

g. Participants were provided, free of charge, new glasses with weaker prescriptions as needed over the course of the evaluation.

h. Of the 18 participants who were reported as having reduced or eliminated their use of glasses or contacts, in fact only three actually eliminated their use of corrective lenses. Of those three, two had worn glasses less than half the time even before using the Method, and the third subject was reported by the doctors to have had “no significant objective change” at the end of the clinical evaluation.

57. More recent versions of the telemarketing script are even more misleading in how the clinical evaluation is described to consumers, in that consumers are told only that 86 % of the subjects in the 1999 clinical evaluation reduced or eliminated their use of glasses or contacts, and 95 % improved their visual acuity. This version is more misleading because it omits the facts that there is no “formal research” on the Method, that the clinical evaluation involved no control group, that there were only 21 participants, and that the evaluation was performed by the Method’s creators.

REPRESENTATIONS THAT THE METHOD IS FUN, FAST AND EASY

58. See Clearly Method telemarketers are scripted to represent that the consumer using

the Method to improve his or her eyesight in an effort to dispense with corrective lenses will find that the exercises require only a few minutes a day, that positive results may well come quickly, and that the exercises are “fun” as well as “easy to do.”

59. See Clearly Method advertisements make misleading representations comparable to those noted in the preceding paragraph, including for example the following:

- a. “We at Vision Improvement Technologies believe the See Clearly Method is the most effective at-home program available for improving your vision safely, naturally, and *easily*.”
- b. “Q: *How much time* do the eye exercises take? A: *Very little*. You can do them while you’re on the phone or while commercials are on TV. You don’t need ‘extra’ time.”
- c. “Q: *Realistically*, how long will it be before I see results? A: Distinguished expert Merrill J. Allen, one of the creators of the See Clearly Method, says *you might well see results fast – in as little as 7 to 10 days*. Some, he says, see results in *as little as two days*.”
- d. “People all across the country never thought they could improve their vision so dramatically and yet *so easily in just minutes a day*.”

60. Although VIT repeatedly represents to prospective buyers that they need only spend a few minutes a day doing the program, in fact the doctors who developed the program recommend spending a minimum of thirty minutes a day doing the techniques, a fact which is not disclosed to consumers unless they happen to make specific inquiry.

61. Some versions of VIT’s telemarketing scripts mislead consumers by directly contradicting the doctors’ recommendation regarding the amount of time one must devote to the Method on a daily basis. See Clearly Method telemarketers are scripted to understate the time involved by telling consumers that the time commitment is only 10 to 15 minutes a day, rather than the half hour minimum that the doctors in fact recommend.

62. VIT has been aware of the fact that its infomercial understates this minimum time commitment since as early as June of 2000, when a person reviewing the See Clearly Method and its promotion expressly brought this discrepancy to the company's attention.

63. VIT also knew from Dr. Muris's experience in conducting the clinical evaluation in 1999 that even under those uniquely supportive circumstances, involving doctor-supervision, individualized attention and weekly seminars, 9 of the original 30 participants did not follow through, and of the 21 participants who completed the evaluation 3 did not comply with instructions to spend at least 30 minutes a day using the See Clearly Method. This level of attrition and non-compliance under nearly ideal conditions put VIT on notice that the Method's regimen could not be accurately characterized as "fun" and "easy to do." In fact, such attrition and non-compliance suggest a significant design flaw in the Method, which should either have been remedied prior to marketing the product or should have been adequately disclosed to buyers.

TESTIMONIALS

Consumer testimonials in advertisements for the See Clearly Method

64. VIT has made liberal use of testimonials in advertising and promoting the See Clearly Method, and upon information and belief many customers were induced to purchase by personal testimonials extolling the benefits of the Method. However, VIT's use of consumer testimonials included the following unfair and deceptive practices:

- a. Testimonials that featured pictures of the testimonial-givers uniformly presented them without glasses, even though discarding one's glasses was not a reality for the vast majority of consumers using the method, and even though in some instances the testimonial-providers pictured had not eliminated their dependency on corrective lenses.

b. In some instances, a person's testimonial continued to be used by VIT even after that person quit using the Method, no longer derived the benefit cited in the testimonial, or even questioned the efficacy of the Method.

c. Testimonials were used without disclosure that the person providing the testimonial had reason to be biased. Perhaps the most egregious example is the use of a dramatic testimonial from a man who was himself an investor in VIT. Other examples include testimonials that were provided by a personal friend of persons in control of VIT; a patient of Dr. Muris; and patients of another doctor promoting the See Clearly Method, Dr. Henry Ettinger, all without disclosure of the special relationships.

d. Numerous testimonials were used without disclosure that the persons providing the testimonials had been subjects in Dr. Muris's 1999 clinical evaluation, and had therefore used the See Clearly Method with the doctor's continuing personal guidance under circumstances substantially different from those the consumer could anticipate.

65. Although VIT advertisements typically included some version of the disclaimer "*Individual results will vary*" in connection with the use of testimonials, this disclosure did not render the objectionable testimonial practices harmless, and did not bring those practices into compliance with applicable law.

66. Claims made in consumer testimonials were in many instances misleading, either at the time the testimonials were first used, or later, when the testimonials continued to be used in spite of subsequent developments relating to the consumer who provided the testimonial.

Examples include the following (in each instance, testimonials in visual media pictured the person without glasses):

a. Testimonial of Mark M--, then age 40, provided on or about July 30, 1999:
"*If I were to use one word to describe the See Clearly Method, it would be 'phenomenal.' Start the See Clearly exercises – they have done wonders for me! I feel like now I can interact with people without having a barrier between us.*" In fact, Mr. M-- was still wearing his glasses at the time of the testimonial for such activities as driving or watching movies. Moreover, as of August 2004 Mr. M-- was back to wearing corrective lenses full time.

b. Testimonial of Leslie S--, then age 46, provided May 23, 2002: *"I found it very easy to improve my vision using the See Clearly Method. I noticed results in three days. I noticed bigger results in three weeks."* In fact, Ms. S-- reported in August 2004 that although she still uses the Method from time to time her eyes have gotten worse since she provided the testimonial and that she was now wearing corrective lenses about 80 % of the time.

c. Testimonial of Jan V--, then age 54, provided on or about July 30, 1999: *"I am now able to look out and see clearly. It's almost like a veil has been lifted. To be able to see the difference in a matter of minutes is very convincing! The method is simple, the procedures are very easy to do, and the value is such that I can't imagine anyone not wanting to do it."* In fact, Ms. V-- reported in August 2004 that her vision had gotten worse since giving her testimonial, that she had dropped from regular use of the Method to sporadic use, and that her current license required her to wear glasses when driving.

d. Testimonial of Dan A--, provided on or about October 20, 1999: *"It's a matter of spending ... minutes per day and it can help you for a lifetime ... these eye exercises are easy."* In fact, Mr. A-- reported in May of 2005 that although he believes he had earlier benefitted from the program it was by no means easy; indeed, it took so much "hard work" that it produced "a massive headache." Mr. A-- quit doing the exercises around 2002, and as of May 2005 was wearing corrective lenses.

67. In some instances, VIT used a testimonial from a clinical evaluation subject when the testimonial was inconsistent with the data that VIT representatives had collected relating to that individual.

68. In addition, VIT violated its duty to monitor the circumstances of testimonial providers and, if those circumstances changed in ways that would render the continued use of the unqualified testimonial misleading, either stop using the testimonial or make appropriate disclosures in connection with its use.

Testimonials by telemarketers

69. See Clearly Method telemarketers have been encouraged by VIT to use the Method and then incorporate personal testimonials into their presentations to prospective customers. For example, telemarketers at O'Curran have been instructed that the best way to sell the Method

is to provide personal accounts of how well it worked for them, and for others at O'Curran.

70. Although this fact was not disclosed to consumers, these telemarketers received significant financial incentives to increase sales volume; indeed, a See Clearly Method telemarketer could make as much as \$27 an hour through such incentives. Thus, the telemarketers had a direct financial stake in persuading prospective customers of the effectiveness of the Method, and the reliability of the telemarketers' testimonials was therefore undermined.

71. Telemarketing scripts written by VIT personnel even go so far as to provide the telemarketers with first-person quotes to use in describing their own personal experiences using the See Clearly Method: "*I do the exercises myself, and I've had excellent results.*"

72. By fostering, and even scripting, this use of testimonials by telemarketers whose financial interest went undisclosed, VIT misled consumers.

Testimonials from professionals

73. Advertisements have featured testimonials from doctors presented in a manner that suggests that the doctors are part of a growing number of progressive optometrists who are "speaking out" in support of the See Clearly Method. Some doctors have undisclosed connections to VIT that constitute clear reasons for bias, and such connections must be disclosed to avoid misleading consumers.

74. Dr. Henry Ettinger, O.D., provided a personal and professional testimonial for the See Clearly Method in November of 2002, and it appeared in television, radio and print advertisements as well as in the free promotional video. Dr. Ettinger's testimonial states: "*I have patients who got out of their glasses and others who experienced significant improvements using*

the See Clearly Method. I use the program myself ... and I recommend it to many of my patients."

75. In connection with providing his November 2002 testimonial, Dr. Ettinger signed an affidavit affirming that "there exists no material connection between myself and Vision Improvement Technologies, L.L.C."

76. In fact, however, only two months earlier, on September 6, 2002, Dr. Ettinger signed an agreement with VIT under which he would be paid \$100.00 an hour plus royalties to develop a vision therapy program for children as a possible adjunct to the See Clearly Method.

77. Dr. Ettinger's financial interests and contractual ties to VIT constituted material facts that should have been disclosed to consumers in connection with Ettinger's testimonial, and failure to make that disclosure violated the Consumer Fraud Act.

78. Dr. Marc Grossman, O.D. also endorsed the See Clearly Method in various advertisements, which feature Dr. Grossman stating: "*[W]hy not try a comprehensive prevention program that could allow many eye conditions to be prevented and corrected? The See Clearly Method is a well-designed at-home program for natural vision improvement.*"

79. Upon information and belief, at or about the time Dr. Grossman provided the above endorsement he was negotiating a contract, or was already under contract, to help VIT develop nutritional programs, for which Grossman would receive royalty payments.

80. Dr. Grossman's financial interests and contractual ties to VIT constituted material facts that should have been disclosed to consumers in connection with Grossman's endorsement, and failure to make that disclosure violated the Consumer Fraud Act.

THE 30 DAY FREE TRIAL PERIOD

81. As noted above (paragraph 22), VIT represents to purchasers of the See Clearly Method that they can try the product for 30 days and, if not satisfied, return it with no further obligation. However, VIT misled numerous consumers regarding important aspects of the return policy (hereinafter referred to as the “return option”), lulling them into believing that returning the product and ending their obligation would be easier than was in fact the case.

Obstacles to exercising the return option

82. Although the 30 day trial period is used to overcome consumer resistance by emphasizing the opportunity to back out of the purchase, consumers who try to take advantage of the return option are met with obstacles. As of about September 2002 VIT began requiring consumers to obtain a Return Merchandise Authorization (RMA) number from the company before VIT would accept delivery of the returned product. This RMA policy was implemented because return rates cut profits too much, and requiring consumers to call in for an RMA would give VIT representatives an opportunity to “save” sales by re-emphasizing the supposed benefits, by extending the trial period beyond 30 days (and thus giving the consumer another opportunity to miss the refund deadline), or by discounting the price.

83. The RMA policy discouraged returns in part by making RMA numbers hard to get. Numerous consumers who phoned the company to request an RMA number found it very difficult to get through to a VIT representative. This obstacle to getting a refund has been identified in many consumer complaints to VIT, to the Better Business Bureau or to law enforcement authorities, as the following excerpts from such complaints show:

- a. “I have been trying unsuccessfully to contact you in regards to returning the See

Clearly Method ... I have left several messages, without any response from you, and have been calling for several days now ...”

b. “My wife and I have spent lots of time trying to get the RMA # by phone, but no success, all we get is lots of recordings.”

c. “I’ve tried calling off and on starting the first week in August to get the RMA number ... but the delay was too extended.”

d. “I phoned two weeks ago for a Return Authorization Number and left a message with my name and phone number. I did not get a response. I tried to call at least six more times and was always put on hold for up to 15 minutes and still no answer. I called again on August 25 and was told I could not get a RMA because I was two days late!”

e. “I called on 1-16-03 to cancel. ... [T]he Customer Service Rep was to give me a Return Authorization Number to send product back in order to receive proper credit. She left me on hold for 25 minutes. I was on lunch break and had to hang up. ... I made a call every day during my lunch period only to be left on hold for over 20 mins. without speaking to anyone. ... I believe this company purposely leaves the customer on hold then they are stuck with the merchandise and basically are forcing you to pay or they report you to the credit bureau.”

f. “The kit has a guarantee and a return offer through 4/12/04, but I had to call the customer service to get a return authorization number. I called on 4/1/04 and waited on line for 20 minutes, but no one ever came on the line. I left a message on 4/13/04 requesting a return call after several times and getting no answer. My call was not returned, so I left another message on 4/19/04, which was also not returned.”

g. “I tried several times to contact this agency to return their product because I was not happy with the results of the See Clearly Program. I called the customer service number and was put on hold after listening to a recorded message telling me to hold for the next available customer service agent. After waiting for at least 5 minutes I hung up and tried to call at other times with the same results. No one ever answered my waiting calls. The warranty for this product ran out on the 29th of August, before I could even get through to speak to any one in the customer service department. Today [9/25/03] I finally got through to be told by the manager, David Carter, no refund could be given.”

h. “I tried calling [but] got put on hold for over a half hour more than once ...”

i. “Over the past three weeks I have attempted to contact people at the company and they make it very difficult to talk to a live person. I have left messages and calls are not returned. ... When I did talk to someone they said that I would have to talk to a supervisor and they would call be back. There have been no returned calls. ... I am too

busy to sit on the phone listening to recordings ... All I want is a refund. ... This is very frustrating and time consuming. They said they would not refund my money.”

j. “I waited on hold for so long, I left a message, and again no one got back to me. I started receiving collection notices ... I felt like you guys [VIT] had set a trap, you give me the 30 day trial and then make it so I cannot get my return number and stick me with the full bill. ... I would sit on hold from anywhere between 25 min-45 min, before I would leave a message ... and still no call back ... I am wanting to return it because I tried a couple of exercises in the book and I got blinding headaches ...”

84. Upon information and belief many consumers attempting to return the Method became so frustrated by the obstacles that they gave up and incurred the charges.

Misrepresenting the length of the trial period

85. Even though VIT’s general policy was to strictly apply cut-off dates for obtaining refunds, the See Clearly Method telemarketers have told consumers that they would have 30 days to try the Method, and then after the 30 days, if they were not completely satisfied, they could send it back and avoid further charges. It is currently unknown how many consumers received such misleading information and thought they had more time to return the product than the company actually granted them.

86. VIT fostered this misunderstanding regarding the length of the refund period in other ways as well, for example, by telling consumers they had a full thirty days to use the product before having to decide whether to keep it and incur further charges.

87. Additional pitfalls for consumers stemmed from VIT’s shifting policy regarding how the final deadline for returning the product would be calculated. For example, as of October 2003 See Clearly Method telemarketers were assuring consumers placing an order for the Method that they had a total of 40 days – 10 days for delivery and then the 30 day trial period – to return it for a refund. In fact, however, VIT policy at the time was to allow only 37 days from

the date of order for a product return, and it is currently unknown how many consumers who acted consistent with the telemarketer's instructions were nevertheless denied the promised refund.

Misleading consumers about trial period risks

88. VIT represents to would-be buyers that the company's 30 day trial period means that they can try the Method for themselves without risk. This is conveyed *inter alia* by representing to prospective purchasers that there is a 30 day "risk free trial" period and that the 30 day money-back guarantee means that there is "nothing to lose."

89. In fact, however, a consumer who agrees to pay \$9.95 and receive the product on a "risk free trial" basis bears the risk that:

- a. He or she will be misled by a telemarketer scripted to say that an unsatisfied consumer may exercise the return option "after the 30 days."
- b. He or she will lose track of when the trial period ends, only to find that VIT may insist upon full payment if the consumer misses the return deadline, no matter how dissatisfied the consumer might be with the Method.
- c. He or she will be unable to devote the time and energy that may be required to reach a VIT customer service representative by phone in order to obtain the required "RMA" number.
- d. He or she will reach a VIT representative who receives a commission for dissuading customers from returning the product and is trained to "save" sales by again touting the Method's supposed benefits or by getting the consumer to keep the product at a discounted price.
- e. He or she will be persuaded by a VIT representative to keep the Method for an extended trial period, creating the risk that the consumer will miss the return deadline the second time around.
- f. He or she will fail to distinguish within the 30 days between lasting, measurable vision improvement and a placebo effect.

Obscuring the total cost of the product

90. The risks to a consumer are exacerbated by telemarketing pitches that obscure the total cost of the program. Exhibit G is a transcript of a See Clearly Method telemarketer who repeatedly refers to the initial shipping charge of \$9.95, but never forthrightly states the total dollar amount of the obligation the consumer will incur if he orders the product and does not return it in time.

91. The isolated reference to total cost (“five payments of sixty-nine eighty”) is easily missed or misapprehended, because it is couched within a longer explanation of the terms at the very end of the call, and requires the consumer to calculate the total price. In addition, the telemarketer’s claim that the full cost of the Method is “less than the cost of an eye exam and a pair of glasses” adds to the likelihood that the consumer will misapprehend the total price. (*See* Exhibit G.)

92. This failure to clearly present the total price of the product invites misunderstanding on the part of the consumer and, particularly in light of other aspects of VIT’s approach to marketing the Method, is unfair and deceptive. Upon information and belief, Exhibit G is representative of the pitch many consumers received.

93. Consumers have been harmed by this failure to clearly present the total price⁵ at the outset, as illustrated by the following complaints, which, upon information and belief, are representative of the experience of many consumers:

- a. “[T]he telemarketer did not fully disclose the total purchase price. She told my husband that the cost would be \$69.95 plus shipping and handling. The actual cost is \$69.95 per month until a total of \$351.00 is paid. My husband never would have agreed

⁵ As previously noted, the price of the Method has varied over time.

to spending that much money ... we are educators, not wealthy people. ... I feel we were treated unfairly ... [by] a dishonest business ...”

b. “I was told the price was \$79.95 ... I would never have ordered the product if I’d known it was \$250.”

c. “I paid the \$9.95 for shipping – but was never told I would have owed \$317.25!! ... I called to return the package – they said I couldn’t since I was past the 30 days ... I asked them how I would have known this – they said it was stated IN A LETTER INSIDE THE BOX!!! I never opened the product!”

d. “I feel I was switched from free literature to a 30 day trial without the true cost being clearly explained to me. I heard \$9.99 and three additional payments. I was unaware that the next payment was more than a tenfold hike, as were the two that were to follow. The first notification I received did not list the amount owed, it only asked for permission to access my credit card account. I find this methodology deceptive and misleading.”

e. “The See Clearly Method sales consultant told me that this would be nine ninety five (\$9.95), and if I keep it after 30 days I would just pay three forty nine (\$3.49), when I received my credit card bill I got charged \$349.00. The sales person made it sound like 3 dollars and 49 cents, they never mentioned the word Hundred ... If I had known that it was supposed to be 349.00 dollars, I would have NEVER ordered it. I feel that I was misrepresented, and not treated fairly in the sale, because I was not explained the price correctly.”

Threat of damage to credit rating

94. As part of its effort to make sure that purchasers who did not meet the 30 day return deadline make all of the required instalment payments, VIT enlists the help of a debt collector who sends letters threatening the consumer’s credit with such statements as:

a. “CREDIT IS A VALUABLE ASSET! ... [Y]ou are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.”

b. “This will be our last attempt to contact you before sending your outstanding balance into collection, which may adversely affect your credit rating ...”

c. “We have reported this debt to all major credit reporting agencies. Unless paid, it may be a detriment in your efforts to rent or purchase property or obtain other forms of credit.”

95. Upon information and belief, many consumers who had legitimate reasons for withholding payment from VIT succumbed to the threat of an impaired credit rating and gave in to VIT's demand for payment.

96. When considered in the context of the overall scheme, such threats constitute unfair practices.

UNDISCLOSED MARKETING OF CONSUMER LISTS

97. See Clearly Method telemarketers are scripted to "capture customer information" at the very outset when a consumer calls in after hearing an ad promoting the free videotape.

98. Until about November 1, 2003, See Clearly Method telemarketers were instructed to inform consumers that the personal information collected by the telemarketers was totally confidential, and that such information would not be shared with or sold to any other businesses.

99. As of about November 1, 2003, however, See Clearly Method telemarketers were scripted not to discuss how such personal information might be used unless asked, in which case the consumer was to be invited to receive free information from VIT's "marketing partners" who had products and services that the doctors considered to be "compatible" with the See Clearly Method.

100. This representation regarding how the personal information would be used is false or misleading in at least the following respects:

a. The entities to which such personal information was channeled included businesses that were not true "marketing partners" of Vision Improvement Technologies. Instead, the entities appeared to include virtually any business willing to rent VIT's customer list for any marketing purpose, whether related to vision or not.

b. Contrary to VIT's express representations to consumers, "the doctors" had no significant role in deciding who was permitted to exploit the personal data extracted by

the telemarketers.

c. VIT provided the personal data to entities for marketing products and services that were not “compatible” with the See Clearly Method in any meaningful way, including businesses selling products wholly unrelated to vision or eye health.

ADDITIONAL ALLEGATIONS

Contents of the program

101. The many components of the See Clearly Method – “5 videotapes, 3 audiotapes, a computer CD ROM, an instruction manual and a progress journal” – are displayed on tv advertisements and listed by telemarketers without disclosure of the fact that the various media are duplicative, with the videotapes, for example, containing virtually the same information as the audiotapes and CD ROM.

102. Upon information and belief, this duplication of information is intended to make the product appear more substantial to the consumer in order to justify the Method’s high purchase price, and such duplication is a material fact that should be disclosed prior to purchase.

“Doctor-trained consultants”

103. See Clearly Method telemarketers have been scripted to assure would-be purchasers that they would have access to “doctor-trained consultants” whom the consumers could call for assistance on how best to use the Method.

104. Upon information and belief, however, the involvement of doctors in training the consultants has been virtually non-existent.

Serious eye disease

105. An introductory letter from Dr. Muris accompanies the See Clearly Method when it is shipped to the customer at the commencement of the 30 day trial period. (See Exhibit H) In

the letter Dr. Muris states:

My colleagues and I, a team of optometrists and research scientists, developed the See Clearly Method for people just like you who want to improve their vision, the health of their eyes, and their overall well-being. We believe that healthy eyes are among life's most precious gifts, and with serious eye disease reaching epidemic proportions, we've devoted our lives to bringing this knowledge to others.

106. However, the See Clearly Method was never designed to address “serious eye disease.” The Instruction Manual states that the Method “was not conceived as a treatment” of cataracts, macular degeneration or glaucoma. In fact, the clinical evaluation of the Method performed by Dr. Muris in 1999 specifically excluded anyone with “bodily or ocular diseases such as diabetes, glaucoma, cataract, macular degeneration, etc.”

107. Dr. Muris’s letter misleads new purchasers of the See Clearly Method by falsely suggesting that the Method plays some significant role in the prevention or treatment of the “serious eye disease” that the doctor claims to be “epidemic.”

108. Similarly, although the telemarketing script instructs telemarketers to acknowledge (if asked) that the Method was not designed to treat such diseases, the telemarketers have been told in trainings that the Method does help prevent diseases of the eye, including cataracts and macular degeneration, and can slow the progress of such diseases in those who already have them. Upon information and belief, these claims cannot be substantiated.

109. The See Clearly Method promotional video also misleads consumers regarding the suitability of the Method for sufferers of serious eye diseases by featuring Cliff Rose representing that “[t]he doctors designed the See Clearly Method to be used by *anyone*, anywhere, at any time.”

The need to consult a professional before using the Method

110. See Clearly Method telemarketers assure would-be buyers that they can purchase and use the program without first consulting an optometrist. However, the consumer who makes the purchase is promptly met with the following “Notice To Consumer” at the front of the Instruction Manual: “All techniques recommended in the See Clearly Method are considered to be completely safe, but *should not be used without first consulting an optometrist or ophthalmologist* to determine if any eye disease or other condition requiring specialized treatment is present.”

111. The fact that a consumer should have a professional consultation prior to using the Method is a material fact that must be disclosed prior to purchase; instead, prospective purchasers are actively misled about this requirement.

VIT representatives not joining “the many who have thrown away their glasses”⁶

112. Although VIT promotes the See Clearly Method as a realistic way to “get out of your glasses” in a quick, easy and fun way, many VIT representatives – including several “See Clearly Method Consultants” who supposedly advised consumers about how to use the Method to best advantage – continued to need corrective lenses even after long periods of involvement with VIT and the See Clearly Method. Similarly, Dr. Muris, the doctor’s wife, and several of the doctor’s employees wear corrective lenses.

113. Aside from what lens-wearing VIT personnel may indicate about the true efficacy of the Method, the fact that many VIT representatives (and members of their immediate families)

⁶ See paragraph 40 (b), above.

have not 'gotten out of their glasses' is a material fact that must be disclosed to consumers.

Safe and fun

114. Telemarketers are scripted to assure consumers that the See Clearly Method is "completely safe" (even "safe for children"), and that the Method is "fun to do." Such scripts include no disclosure to consumers of any hazards or discomforts that may attend use of the Method.

115. Similarly, advertisements for the Method repeatedly emphasize that it improves vision "*safely*," and characterize the use of the See Clearly Method as "*free of pain*, free of risk."

116. However, a consumer who reviews the Instruction Manual after ordering the Method discovers that "some people get headaches" from doing each of several key exercises, (see, e.g., Exhibit B, "*Troubleshooting*"), and consumers have in fact reported headaches caused by the Method (e.g., "a massive headache," "blinding headaches," "eyestrain headaches," "severe headaches," "My daughter [10 years old] started getting headaches from the exercises").

117. Although participants in the 1999 clinical evaluation were informed that headaches may attend the use of the Method, VIT has not imparted the same important information to consumers deciding whether to order the product.

118. The fact that the Method's exercises may cause headaches is a material fact that must be affirmatively disclosed, and unqualified representations that the Method is safe, fun, and pain-free are misleading.

119. Another hazard is implicated by the fact that telemarketers advise consumers that one of the ways of fitting the eye exercises into one's daily routine is to perform them while "waiting ... at a stop light."

120. Upon receiving the kit, however, the purchaser who examines the Instruction Manual learns that VIT regards the telemarketer's suggestion as creating an unsafe situation: "[D]on't do the exercises ... while engaging in any potentially dangerous activity ... such as driving."

121. It is misleading and unfair for telemarketers soliciting a sale to recommend a use of the product that is recommended against, for safety reasons, in the instructions that accompany the product.

122. Another hazard is implicated by the fact that telemarketers have told some consumers that the "Pure Focus" drops marketed with the Method were eye drops, when in fact they were formulated to be administered orally.

123. It is currently unknown to the Attorney General what damage or discomfort to the eye might have been sustained by consumers on account of such misinformation relating to how "Pure Focus" was to be used. In any event, misinforming consumers in this manner was a deceptive and unfair practice.

Implying professional acceptance

124. See Clearly Method telemarketers are instructed to ask callers whether they were referred by their doctors.

125. Upon information and belief, that question is asked not to obtain information, but for the sole purpose of conveying the false impressions that the Method enjoys greater acceptance among doctors than is in fact the case and that it is common for doctors to advise patients to get the See Clearly Method.

“Thousands” of consumers with improved vision

126. See Clearly Method telemarketers were scripted to tell consumers that if after 30 days they were not completely satisfied for any reason, they could send the Method back, but if instead they found, *“like thousands of others,”* that their vision was improving, they could keep it and incur the charges on their credit card.

127. The Instruction Manual that a consumer receives at the beginning of the 30 day trial period opens with a letter from Dr. Muris congratulating the purchaser for choosing the See Clearly Method. The letter continues: *“Tens of thousands* of people are now taking charge of the health and well-being of one of their most precious gifts, the gift of sight. Now it is your turn.” The Manual later states that the techniques have been “proven effective in years of clinical practice with *thousands of patients ...*” and that *“thousands* of people like yourself have already achieved results with the program.”

128. Upon information and belief, these references to “thousands” and “tens of thousands” substantially exaggerate the number of consumers who have received the claimed benefits through the use of the See Clearly Method.

129. The above-quoted representations regarding the number of positively-affected customers constitute claims for which VIT was required to have substantiation at the time such claims were made under Iowa Code § 714.16 (2)(a). Upon information and belief, VIT did not (and does not) have such substantiation.

Contacts from “satisfied customers” and undisclosed complaints

130. VIT form letters tell consumers that “[e]very day we receive letters, emails, and phone calls from satisfied customers who have found that the See Clearly Method has improved

their vision.”

131. Similarly, telemarketers have been scripted to tell consumers “we hear from people every day who have had **tremendous improvement** in their vision.” (Emphasis in original.)

132. In fact, in a 54 day sampling period from August 1 to September 23, 2004, VIT received a total of six (6) favorable consumer contacts. In the same period, VIT received forty-nine (49) complaint letters; nineteen (19) complained about the product’s lack of effectiveness or about some other feature of the See Clearly Method, and the other thirty (30) complained about some other aspect of VIT’s marketing operation or refund policies.

133. See Clearly Method telemarketers were told in a video-taped July 2003 training session that consumers had not filed any complaints against VIT with the Better Business Bureau. In fact, the BBB began receiving consumer complaints against VIT in connection with the Method as early as October of 2001, as of July 2003 had received fifteen consumer complaints, and as of August 2005 had received 173 such complaints.

134. VIT misleads consumers by exaggerating the extent of favorable consumer reaction and by failing to disclose the far greater extent of unfavorable customer reaction, and it is a deceptive and unfair practice to misinform sales representatives regarding the extent of customer dissatisfaction in the manner described above.

Customer survey by the Consumer Protection Division

135. In September of 2004 the Consumer Protection Division obtained from VIT a customer list that included the 575 Iowans who purchased the See Clearly Method between January 1, 2004 and August 27, 2004. The list indicated which Iowa consumers obtained a Return Merchandise Authorization number in connection with efforts to return the product to the

company. Of these 575 Iowa purchasers, 268 (47 %) obtained RMAs.

136. In order to gauge the experience of the presumptively satisfied consumers who were shown by VIT's records not to have been assigned an RMA, the Consumer Protection Division randomly selected 101 such purchasers and sent them questionnaires beginning in November of 2004, by which time each consumer had the opportunity to use the See Clearly Method for at least two months. Sixty-two returned at least a partially completed questionnaire.

137. After asking whether the consumer actually used the See Clearly Method, the questionnaire asked: "What results, if any, did you obtain from using it?" Of the 62 Iowans who responded to the questionnaire, 46 answered this latter question. Of those 46 who answered, 27 (59 %) indicated that they had no positive results, 14 (30 %) indicated that they had little improvement, and 5 (11 %) indicated that they had major improvement.

138. Upon information and belief, this survey of presumptively satisfied consumers reflects the general experience of purchasers who have not lodged complaints or sought refunds, and only a fraction of non-complaining consumers believe that they actually received a significant benefit from using the See Clearly Method.

Injunctive relief

139. Neither all nor any part of the application for injunctive relief herein has been previously presented to and refused by any court or justice. Iowa R. Civ. P. 1.1504.

140. In an action by the state, no security shall be required of the state. Iowa R. Civ. P. 1.207.

COUNT I

CONSUMER FRAUD ACT VIOLATIONS

141. Paragraphs 1 through 140 are incorporated herein by reference.

142. Defendants' practices violate the prohibition of Iowa Code § 714.16 (2)(a) against misleading, deceptive, unfair, and omissive acts and practices, and otherwise violate that subsection, when such practices are considered separately and/or when they are considered in combination to constitute one or more marketing schemes.

143. Although it is not necessary to establish reliance, damages or intent to deceive to obtain injunctive relief or reimbursement under the Consumer Fraud Act (*see* paragraph 17 above), establishing these factors, particularly intent, is nevertheless relevant *inter alia* to the Court's determination of the appropriate scope of injunctive relief and the appropriate amount of civil penalties. Those acts and practices of Defendants in violation of subsection (2)(a) of the Consumer Fraud Act as alleged in this Count did in fact induce reliance on the part of consumer victims, did in fact cause damage to consumers, and/or were in fact intentional.

COUNT II

CONSUMER FRAUDS COMMITTED AGAINST OLDER PERSONS

144. Paragraphs 1 through 143 above are incorporated herein by reference.

145. Many of the Consumer Fraud Act violations for which the Defendants are responsible were committed against older persons and give rise to the additional civil penalty provided for in section 714.16A.

PRAYER

Plaintiff prays the Court grant the following relief:

A. Pursuant to Iowa Code § 714.16 (7), and upon further request by Plaintiff addressed to the Court, enter a temporary restraining order and preliminary injunction restraining Defendants, and each of them, and (as applicable) each such Defendant's directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with such Defendant who have actual or constructive notice of the Court's injunction, from engaging in the deceptive, misleading, omissive, unfair and other unlawful practices alleged in this Petition or otherwise violating the Iowa Consumer Fraud Act.

B. Pursuant to Iowa Code § 714.16 (7), after trial on the merits, make permanent the above-described injunctions, expanding their provisions as necessary by including *inter alia* such "fencing in" provisions as are reasonably necessary to ensure that Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable or related violations of law.

C. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for amounts necessary to restore to consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act.

D. Pursuant to Iowa Code § 714.16 (7), enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. Pursuant to Iowa Code § 714.16 (7), enter judgment against each Defendant for up to \$40,000.00 for each separate violation of the Consumer Fraud Act.

F. Pursuant to Iowa Code § 714.16A, enter judgment against each Defendant for an additional civil penalty not to exceed \$5,000.00 for each violation of the Consumer Fraud Act committed against an older person.

G. Award Plaintiff interest as permitted by law.

H. Pursuant to Iowa Code § 714.16 (11), enter judgment against Defendants, jointly and severally, for attorney fees, state's costs and court costs.

I. Grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

Thomas J. Miller
Attorney General of Iowa

A handwritten signature in black ink, appearing to read 'St. Clair', is written over a horizontal line.

Steve St. Clair PK 2715271
Assistant Attorney General
Hoover Building, 2d Floor
Des Moines, Iowa 50319
Ph: 281-5926
Fax: 281-6771

tion is gained in this way, as indicated by the ability to see a perfect black, it is completely retained when the eyes are opened, and the patient is permanently cured. At the same time pain in the eyes and head, and even in other parts of the body, is permanently relieved. Such cases are very rare, but they do occur. With a lesser



Fig 45

Fig. 1.—Patient with absolute glaucoma of the right eye. He had suffered agonizing pain for six months and had no perception of light. He was photographed when testing the tension of his eyeball, which he found to be perfectly hard.

Fig. 2.—The patient is palming and remembering a perfectly black period. After half an hour the eyeball became soft, the pain ceased, and the patient became able to see the light. After three years there was no return of the glaucoma.

degree of relaxation much of it is lost when the eyes are opened, and what is retained is not held permanently. In other words, the greater the degree of the relaxation produced by palming the more of it is retained when the

Pumping

What you do. Rhythmically change focus back and forth between a near object and a far object, briefly looking at the smallest detail you can see on each object.

Benefits. Pumping exercises the focusing mechanism and improves control of the extraocular muscles.

How to do it:

Step 1. Choose a near object. Use your finger, thumb, pen, trinket, or piece of jewelry. Hold it no more than six inches away from your face.

Step 2. Choose a far object. Use something across the room, such as a painting or doorknob, or something you can see out a window, such as a tree, building, or traffic light. This object should be as far away from you as possible, yet you should just be able to see some detail in the object. We recommend using an object at least 15 feet away, but the distance can be less.

Step 3. Keep the near object stationary.

Step 4. Change focus every couple of seconds:
near... far... near... far... near... far... near...
far...



Step 5. At the end of each change of focus, look at the smallest detail you can see on the object. For example, if your thumb is the near object, look at a crease of skin or a line on your skin; if a tree is the far object, look at a single leaf. When doing Pumping with the Daily Exercise Video, use interesting objects with

many small details to avoid boredom. Or you can use the small Word Chart as the near object and the large Word Chart as the far object.

Step 6. Blink frequently and select a different detail each time you change focus.

Advanced. Over time, as you practice this exercise, hold the near object closer and closer. The goal is to continually challenge your ability to see detail as you change focus.

Troubleshooting.

People who have “convergence problems” (difficulty turning the eyes inward or crossing them) may get headaches from Pumping. If you feel a headache developing, immediately close your eyes, breathe slowly and deeply, and wait for it to go away. Then resume Pumping. If the headache returns, close your eyes again and breathe slowly and deeply. Repeat the cycle, trying to extend your Pumping by a few seconds each time. In this way, you can quickly work your way through the problem until you can do the exercise without discomfort. An extra benefit of overcoming convergence-related headaches is that you may experience an increase in reading speed and/or eliminate motion sickness.

Palming

What you do. Close your eyes and cover them with your hands so that no light gets in.

Benefits. Palming can reduce visual stress and eyestrain.

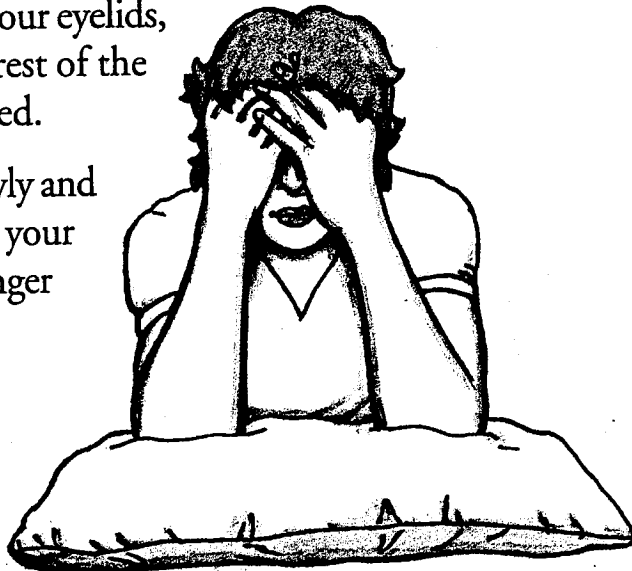
How to do it:

Step 1. Take off your glasses.

Step 2. Close your eyes and cover them with cupped hands so that no light gets in. Rest the heels of your palms on your cheekbones and cross your hands on your forehead, as shown in the illustration. Don't press on your eyes.

Step 3. Make sure your eyelids, eyebrows, and the rest of the eye region are relaxed.

Step 4. Breathe slowly and deeply and imagine your eyes becoming stronger and healthier.



In those exceptional cases in which the patient can become accustomed to the light, it is beneficial. After looking at a strong electric light some patients have been able to read the Snellen test card better.



Fig. 47. Woman Aged 37, Child Aged 4, Both Looking - Directly at Sun Without Discomfort

It is not light but darkness that is dangerous to the eye. Prolonged exclusion from the light always lowers the vision, and may produce serious inflammatory conditions. Among young children living in tenements this is a somewhat frequent cause of ulcers upon the cornea, which ultimately destroy the sight. The children, finding their eyes sensitive to light, bury them in the pillows

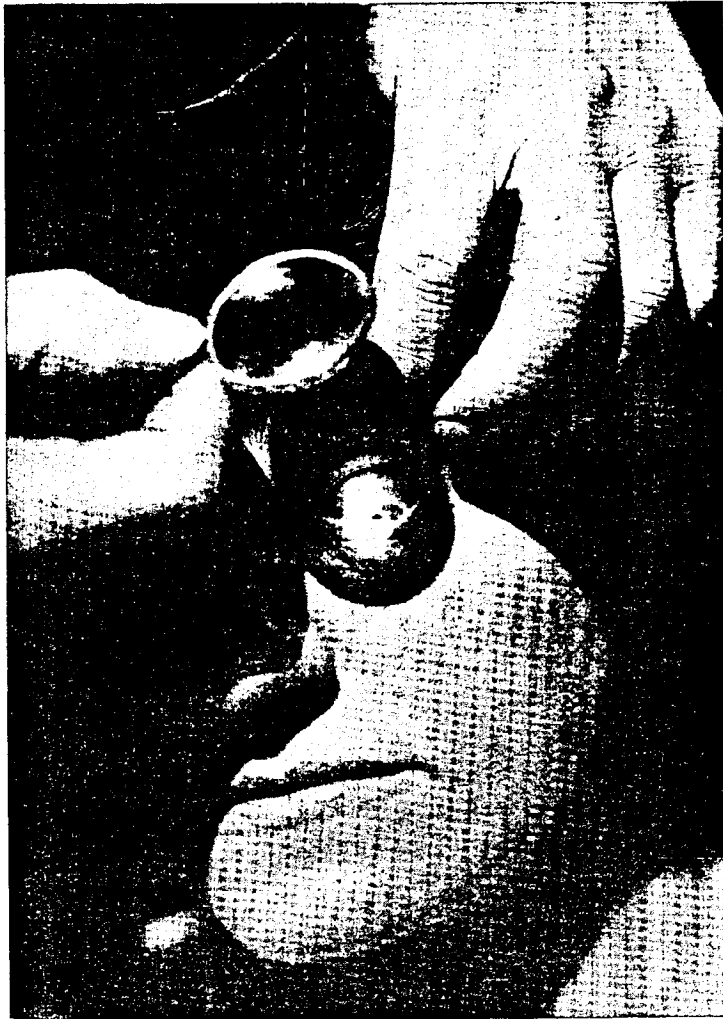


Fig. 48. Focussing the Rays of the Sun Upon the Eye of a Patient by Means of a Burning Glass

Light Therapy

What you do. Sit with your eyes closed, about six inches away from a 150-watt light.

Benefits. Light therapy can relax your eyes and stimulate the flow of nutrients to the entire eye region.

How to do it:

Step 1. Place a 150-watt light bulb in an unshaded lamp. (A 100-watt bulb is not strong enough.)

Step 2. Take off your glasses.

Step 3. Sit about six inches away from the lamp with your eyes closed and relaxed. The light should make your eyes feel pleasantly warm but not too hot. If you're especially sensitive to light, sit farther away and reduce the distance to six inches as it becomes more comfortable. Within a few days your eyes should be desensitized.

Step 4. Gently move your head slightly from side to side, so that each eye receives an equal amount of light.



Step 5. Breathe slowly and deeply and imagine your eyes becoming stronger and healthier.

Recorded message: Hi, I'm Cliff Rose, founder of Vision Improvement Technologies, the See Clearly Method Company. Congratulations...

S: Thank you for calling the See Clearly Method. My name is Sherri. May I ask your name?

BH: Bobby H [REDACTED]

S: Bobby H [REDACTED]? H- [REDACTED]?

BH: H- [REDACTED]

S: H- [REDACTED].

BH: Yeah.

S: And your address, Bobby?

BH: [REDACTED] Road.

S: [REDACTED] Road. Is there an apartment number?

BH: No ma'am.

S: What's your zip code?

BH: [REDACTED].

S: [REDACTED]. OK. And that is in [REDACTED], North Carolina.

BH: Um hum.

S: And your telephone number, with area code first?

BH: 704- [REDACTED].

S: And how did you hear about The See Clearly Method?

BH: On the radio.

S: Is it just for you, or a family member, or both?

BH: For me.

EXHIBIT G

S: **And how long have you been wearing your glasses or contacts?**

BH: Uhhh ... (sigh) Since I was in the third grade. That was a long time ago.

S: So it's been fifteen years?

BH: Well, forty-seven.

S: Oh.

BH: **Been about forty years.**

S: **OK, well you're ready to get out of them, aren't you Bobby?**

BH: It'd be nice.

S: OK, well, do have a moment, I could tell you a little bit about the program?

BH: Sure.

S: All right. The See Clearly Method is a simple exercise program to strengthen the muscles in your eyes so that you can see better. **And it corrects problems like near-sightedness, far-sightedness, astigmatism, eye strain and even night blindness.** And what kind of vision problems are you having, Bobby?

BH: Well, um, near-sighted plus it's getting to where I can't see close up so I'm wearing bifocals.

S: OK, well, you'll ... **this program certainly does correct both of those problems** and right now the doctors are offering a great opportunity where you can try the program at home for thirty days for just the cost of the shipping and handling which is nine dollars and ninety-five cents.

BH: Uh huh.

S: And that way you can sit down and experience the program yourself and see how it can help you to get out of your glasses. And the doctors expect that you will see noticeable results in about thirty days, but most people notice results even sooner than that. **So you could be well on your way to being out of your glasses by the holidays.** So would you like to give this a try and see what it's going to do for you?

BH: Sure.

S: And which credit card did you want to put the nine ninety-five on?

BH: Well, that's the problem. I don't have a credit card.

S: I can put it on a debit card or take a check over the phone.

BH: Uh, all right. How do I do a check over the phone?

S: I, I take down the, the routing number, the account number, the check number and it's all done electronically for just nine dollars and ninety-five cents.

BH: All right. I am riding down the road as we speak. Let me get to a place where I can pull over.

S: OK.

BH: All right.

S: All right, I need all the numbers on the bottom from the far left all the way over to the right. The routing code, the account number and the check number.

BH: OK, that'll be three different things of numbers here.

S: It's straight across the bottom.

BH: All right. 0 5 3 ...

S: 0 5 3.

BH: [REDACTED]

S: [REDACTED]

BH: [REDACTED]

S: [REDACTED]

BH: Second set is 1, five zeros ...

S: Five zeros?

BH: Uh hum.

S: 1, 2, 3, 4, 5.

BH: 4 [REDACTED]

S: 4 [REDACTED]

BH: 1 [REDACTED]

S: 1 [REDACTED] And the check number?

BH: 0 [REDACTED]

S: 0 [REDACTED] All right.

BH: How much did you say it would be?

S: Nine dollars and ninety-five cents. And make that out to See Clearly Method. And this should be out to you in the next seven to ten business days. And your thirty days do not start until you receive the program. And when you receive it, take time to sit down and look it over but more importantly use it and if, before the thirty days are over, you decide you don't want to purchase it, just call the 800 number that's listed in your program, tell them you're sending it back, they'll give you a return authorization number, put it back in the box, return it to us. No questions asked. But if you decide you would like to purchase it, it would just be **five payments of sixty-nine eighty which is less than the cost of an eye exam and a pair of glasses.** And you're improving your vision whether you keep the program or not. OK?

BH: OK.

S: All right. Well, thank you for calling and you have a nice day.

BH: You do the same.

S: Bye, bye.



Natural Vision Improvement You Can Trust

April 29, 2004

FREMONT CA 94538

Account No. 1091646

Order No. 1015314

Dear Valued Customer:

Congratulations on taking the first step to improving your vision naturally. We at Vision Improvement Technologies believe the See Clearly Method is the most effective at-home program available for improving your vision safely, naturally, and easily.

My colleagues and I, a team of optometrists and research scientists, developed the See Clearly Method for people just like you who want to improve their vision, the health of their eyes, and their overall well-being. We believe that healthy eyes are among life's most precious gifts, and with serious eye disease reaching epidemic proportions, we've devoted our lives to bringing this knowledge to others.

So what are you waiting for? Just jump right in, read your "How to Get Started Quickly" instruction sheet, and begin improving your vision today!

Sincerely,

Dr. David W. Muris

Dr. David W. Muris, O.D.
VIT Doctor Advisory Board
Co-Developer of the See Clearly Method

**Read Your
How to Get Started Quickly
Instructions
Right Away!**

P.S. As a way of further supporting your efforts to improve your vision naturally, we have included an extra 30-day supply of the See Clearly Method nutritional supplement, with Lutein, formulated specifically for vision.

Guaranteed through: 6/5/2004

CODE #SC2102
SEE CLEARLY METHOD PROGRAM

Our Guarantee to You:

Vision Improvement Technologies offers a 30-day money-back guarantee on all its products. To keep the See Clearly Method, do nothing and your payment(s) will occur automatically after the guarantee date (see left). If you wish to return it please call Customer Service at 1-877-232-3598 by the guarantee date to receive a Return Merchandise Authorization (RMA) number. (See instructions on back.) You can use all the program materials and still get a refund/credit, less shipping and handling. If you have any questions as you use the program, please call one of our experienced See Clearly Method consultants at 1-877-232-3598. Thank you for your purchase!

PACKING SLIP USA - NEW (1)

EXHIBIT H